section; but he does not feel their way of showing their disapproval to be either honest or advisable. "If I could come to such a conclusion," he says, "I should not be indisposed to arrive at it, because where there is a contract one does not like to allow it to be repudiated. But I think that even greater hardship would be the result by frittering away the effect of the statute by nice distinctions."

Lord Justice Lindley distinguishes *Morton* v. *Tibbett* without trouble, remarking that about that case he says "nothing, except that I accept it. I think it plain that there is no acceptance at all. It is paradoxical to say that when a man sees a thing and rejects it he accepts it."

Of course this is careful language, but it seems sufficient to warrant a hope that as the unworthy ancestry of the doctrine is now distinctly seen, and its sophistry appreciated, the notion may soon be tested in the House of Lords, and either laid to rest forever, or made unimportant by the repeal of the obnoxious provision.

THE MEANING OF "PENAL" IN INTERNATIONAL LAW.— The case of *Huntington* v. *Atrill*, 8 Times L. R. 341, decided this spring in the Privy Council, is an important addition to a difficult and somewhat confused branch of International Law. The only case quoted as directly in point is a proceeding in equity between the same parties in Maryland in 1889 (70 Md. 191). A New York statute provides that if any certificate or report made, or public notice given, by the officers of a certain corporation be false in any material representation, "all the officers who shall have signed the same shall be jointly and severally liable for all the debts of the corporation contracted while they are officers thereof." The damages sought for false representation under this statute in these two cases was over $100,000. The defence was that as the clause was penal, a rule of international law forbade recovery in a foreign jurisdiction. That the courts of one State will not enforce the penal code of another is not disputed, and the only important controversy is on the meaning of the word "penal." The Maryland court decided, by five judges against two, that there could be no recovery. Their argument was that the clause does not give mere compensation for injury to the individuals injured, but gives compensation to all the subscribers, whether affected or not by the misrepresentation, and that to the full extent of their claim, as soon as it is shown that any offence of the kind forbidden has been committed. "It is extremely difficult to conceive that the statute was not intended to provide a punishment for the obnoxious acts. The payment of a sum of money, which a party would not otherwise be obliged to pay, is no less a punishment because it is inflicted through the medium of a civil suit instead of a criminal prosecution." This last point is supported at some length by the learned judge, though the dissenters accept it freely. They also agree with Judge Bryan that his numerous quotations prove that in construing statutes "penal" is often used as equivalent to punitive, in distinction from compensatory. What they do is to supplement his quotations with others bringing out a meaning equally well defined, which they hold to be the proper one as applied to the rule of international law under discussion. In this sense, says Judge Stone, for the dissent, the word "penal" is used only where the action is not for a private injury, but in the name of the State for the violation of her laws. He finds a satisfactory statement in the case of *Wisconsin* v. *Pelican Insurance Co.*, 127 U.S.

265, where Judge Gray says: "The rule that the courts of no country execute the penal laws of another, applies not only to prosecutions and sentences for crimes and misdemeanors, but to all writs in favor of the State for the recovery of pecuniary penalties for any violation of statutes for the protection of its revenue or other municipal laws, and to all judgments for such penalties." And he takes this with a negative, *i. e.*, that the rule extends no further. To his mind, "penal" here is synonymous with the proper meaning of "criminal;" that is, covering breaches of duty which confer no rights on individuals, and of which the State alone has cognizance.

The Privy Council unanimously accept the reasoning of the dissenting Maryland judges, though the Court of Appeal, from which the case was appealed, had been equally divided. They go over with care the few cases in which the language seems against their decision, and point out clearly that the Maryland decision — the only one directly in point — is based on a failure to distinguish the two meanings of the word "penal." Lord Watson, who delivered the opinion, states that their lordships had already intimated that the term was inadequate, having a perfectly proper sense in which it fails to mark entirely that distinction between civil rights and criminal wrongs which is the very essence of the international rule. Though there is a little direct authority on the point, it would seem that the English decision must be everywhere accepted; and thus one more of the ghosts born of carelessness in the use of the words be laid at rest.

RECENT CASES.

AGENCY — VICE-PRINCIPAL — MASTER AND SERVANT. — In Indiana, a baggage-master on a railroad train is considered a fellow-servant with the conductor of another train, through whose negligence a collision occurs. *Kerlin* v. *Chicago, P. & St. L. R. Co. et al.*, 50 Fed, Rep. 185 (Ind.).

A brakeman on one train is a co-servant of the conductor and engineer of another train, and if killed in a collision caused entirely by the negligence of the latter, the company is not liable. *Baltimore & O. R. Co.* v. *Andrews*, 50 Fed. Rep. 728 (Ohio).

Railroad Co. v. *Ross*, 112 U. S. 377, is distinguished in both of the above cases; in the former one, Judge Baker, in speaking of the Ross case, says, "It reaches the borderline, and ought not to be held to be controlling, except in cases presenting the same facts."

ASSUMPSIT — IMPLIED PROMISE TO PAY FOR USE OF PROPERTY. — Where the owner of premises has put in a telephone under a contract with the company to pay a stated sum each month for a period not expired, the occupant of the premises who uses the telephone is liable upon an implied promise to repay the owner. *McSorley* v. *Faulkner*, 18 N Y. Supp. 460 (Common Pleas of N. Y. City and County).

This holds that a promise will be implied to pay for the use of another's property, although such use causes no loss to the owner. It seems contrary to *Phillips* v. *Homfray*, 24 Ch. Div. 439, 461-463, in which case it was held that where one had carried coals from his mines through passages under the plaintiff's farm, no action in the nature of contract would lie against him or his executor.

ATTACHMENT — RIGHTS OF JOINT DEBTOR. — Plaintiff was jointly indebted to a third person under a mortgage and lien on certain property to secure payment of a joint debt. He sold out his interest to his co-debtor, under an agreement that the co-debtor should pay all outstanding obligations. Plaintiff then paid the debt secured by the mortgage, taking an assignment thereof, and attached the property covered by the mortgage. *Held*, that he acquired no rights thereby which he could enforce in an action to try title against a claimant of the property. *Allison* v. *Patterson*, 11 So. Rep. (194 Ala.).